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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,967	12/29/2003	Hamid Ould-Brahim	38898-0070	9017
23577	7590	01/24/2008		
RIDOUT & MAYBEE SUITE 2400 ONE QUEEN STREET EAST TORONTO, ON M5C3B1 CANADA			EXAMINER SILVER, DAVID	
			ART UNIT 2128	PAPER NUMBER
			MAIL DATE 01/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/747,967

Applicant(s)

OULD-BRAHIM, HAMID

Examiner

David Silver

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Instant Office Action is in response to the Required for Continued Examination filed 10/30/2007.
2. Claims 21 and 22 are currently pending in Instant Application.
3. The Instant Application is not currently in condition for allowance.
4. The Instant Office Action is being made **final** because the After-Final amendment 3/7/07 **was entered** in the subsequent Advisory Action 3/29/07 and there are no new grounds of rejection. The arguments presented in the After-Final were considered but not persuasive. As indicated in the Advisory Action, the unpersuasive arguments have been addressed in the Final Rejection dated 1/09/2007.

Priority

5. Priority is not claimed (**12/29/2003**).

Response to Arguments

Response: 35 U.S.C. § 101

6. Background:

Claims 21-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In this instance, absent an explicit and deliberate definition in the specification that the product includes an appropriate medium or hardware elements, the claims are directed to software, *per se*. Note exemplary claim 21 which recites only software elements. Additionally, software, *per se*, is not considered concrete.

7. Applicants argue:

"With regard to the statutory nature of the subject matter of the claims, it is submitted that claims to a "node" comprising at least one "forwarder" are more than merely "software per se"." (Remarks: page 5)

8. Examiner Response:

Applicants' remarks are conclusionary and do not present evidence to rebut the prima facie case established by the Examiner. From PGPPUB para [0002] it is seen that emulation can be performed by

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either hardware or software. Therefore, the forwarders appear to be capable of being either hardware or software. The Specification and the claims do not limit the forwarders to being hardware. The rejection is therefore maintained.

Response: 35 U.S.C. § 102

9. Background:

9.1 Claims 21-22 stand rejected under 35 U.S.C. 102(e) as being anticipated by Zelig et al. (**US 20040037279 A1**).

9.2 Claims 21-22 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Anthony J. Li et al. (**US 5,473,599**).

10. Applicants argue:

10.1 "As claims 21 and 22 are, according to the amendments, specific about the performance of various functions, it is submitted that the art cited by the Examiner, which art does not explicitly prohibit the performance of the functions, no longer inherently anticipates the limitations.

In particular, it is submitted that the pseudo wires discussed in Zelig are point-to-point and "full mesh" (see paragraphs [0017], [004g], [00S0], [0064]) and that multihop pseudo wires are not considered." (Remarks: page 3-4)

10.2 "Since, it is submitted, neither Zelig nor Li disclose or suggest terminating a first segment of a multihop pseudo-wire and neither Zelig nor Li disclose or suggest originating a second segment of a multihop pseudo-wire as required by both claims 21 and 22, then neither Zelig nor Li can anticipate an intermediate node in a multihop pseudo-wire having the functional limitations recited in claims 21 and 22." (Remarks: page 4-5)

11. Examiner Response:

In response to applicant's argument that multihop pseudo wires are not considered, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

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The "forwarder" of claim 21, and first and second forwarders of claim 22 have intended use for terminating and originating, which is not given patentable weight because the intended use does not result in a structural difference between the claims invention and the prior art.

Rejections are **maintained**.

Claim Interpretation

12. Limitations drawn to allowing, enabling or making optional a function's performance does not further limit a claim. As such, any prior art not explicitly prohibiting the performance of the function inherently anticipates the limitation.
13. Further, apparatus claims are not limited by intended use which does not alter the structure of the apparatus claim.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

14. Claims 21-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In this instance, absent an explicit and deliberate definition in the specification that the product includes an appropriate medium or hardware elements, the claims are directed to software, *per se*. Note exemplary claim 21 which recites only software elements. Additionally, software, *per se*, is not considered concrete.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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15. Claims 21-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Zelig et al. **(US 20040037279 A1)**.

Zelig discloses: 21. An intermediate node in a multihop pseudo-wire comprising:

a forwarder for: terminating a first pseudo-wire segment of said multihop pseudo-wire, where a description of said first pseudo-wire segment includes, as a target, an attachment individual identifier associated with said forwarder; originating a second pseudo-wire segment of said multihop pseudo-wire, where a description of said second pseudo-wire segment includes, as a source, said attachment individual identifier associated with said forwarder **(forwarding logic ... Fig 1, 2 (item 34 "forwarding engine") and Figs' descriptions; individual identifier ... Fig 4 5 and their descriptions)**.

Zelig discloses: 22. An intermediate node in a multihop pseudo-wire comprising:

a first forwarder for terminating a first pseudo-wire segment of said multihop pseudo-wire, where a description of said first pseudo-wire segment includes, as a target, an attachment individual identifier associated with said first forwarder; and a second forwarder for originating a second pseudo-wire segment of said multihop pseudo-wire, where a description of said second pseudo-wire segment includes, as a source, an attachment individual identifier associated with said second forwarder **(forwarding logic ... Fig 1, 2 (item 34 "forwarding engine") and Figs' descriptions; individual identifier ... Fig 4 5 and their descriptions; the figure has at least two routers, each of which has a first forwarder logic and second forwarder logic.)**.

16. Claims 21-22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Anthony J. Li et al. **(US 5,473,599)**.

Li discloses: 21. An intermediate node in a multihop pseudo-wire comprising:

a forwarder for: terminating a first pseudo-wire segment of said multihop pseudo-wire, where a description of said first pseudo-wire segment includes, as a target, an attachment individual identifier associated with said forwarder; originating a second pseudo-wire segment of said multihop pseudo-wire, where a description of said second pseudo-wire segment includes, as a source, said attachment individual identifier associated with said forwarder **(col: 8 line: 19-23; col: 2 line: 16-30)**.

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Li discloses: 22. An intermediate node in a multihop pseudo-wire comprising:

a first forwarder for terminating a first pseudo-wire segment of said multihop pseudo-wire, where a description of said first pseudo-wire segment includes, as a target, an attachment individual identifier associated with said first forwarder; and a second forwarder for originating a second pseudo-wire segment of said multihop pseudo-wire, where a description of said second pseudo-wire segment includes, as a source, an attachment individual identifier associated with said second forwarder (**col: 8 line: 19-23; col: 2 line: 16-30**).

Conclusion

17. All claims are rejected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Silver whose telephone number is (571) 272-8634. The examiner can normally be reached on Monday thru Friday, 10am to 6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached on 571-272-2279. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained from

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either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Silver
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ds

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